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AN BILLE FIONTRAÍOCHTA (COSAINTE IOMAÍOCHTA AGUS  
TOMHALTÓIRÍ), 1989  
ENTERPRISE (COMPETITION AND CONSUMER PROTECTION)  
BILL, 1989

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*Mar a tionscnaíodh  
As initiated*

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ARRANGEMENT OF SECTIONS

Section

1. All anti-competitive practices to be void.
  2. Abuse of a dominant position.
  3. Jurisdiction to award damages and other relief.
  4. Notification of new agreements, decisions and concerted practices to the Director of Consumer Affairs and Fair Trade.
  5. Notification of existing agreements, decisions and practices.
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  12. Commencement.
  13. Short title.
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ACTS REFERRED TO

Companies Act, 1963	1963, No. 33
Patents Act, 1964	1964, No. 12
Restrictive Practices Acts, 1972 and 1987	
Worker Participation (State Enterprises) Act, 1977	1977, No. 6



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TOMHALTÓIRÍ), 1989  
ENTERPRISE (COMPETITION AND CONSUMER PROTECTION)  
BILL, 1989

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# BILL

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*entitled*

AN ACT TO PROHIBIT ANTI-COMPETITIVE PRACTICES  
AND ABUSES OF A DOMINANT POSITION; TO AMEND  
THE RESTRICTIVE PRACTICES ACTS, 1972 AND 1987,  
AND TO PROVIDE FOR RELATED MATTERS.

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BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

All anti-  
competitive  
practices to be void.

1.—(1) All agreements, decisions or concerted practices between  
individuals, trade associations or companies which may affect trade  
within the State and which have as their object or effect the pre-  
vention, restriction or distortion of competition in the State shall be  
unlawful and void.

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(2) Without prejudice to the generality of the foregoing, all agree-  
ments between individuals, trade associations or companies which  
directly or indirectly—

(a) fix purchase or selling prices or other trading conditions;

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(b) limit or control production, markets, technical developments  
or investment;

(c) share markets or sources of supply;

(d) apply similar conditions to equivalent transactions with other  
trading parties, thereby placing them at a competitive  
disadvantage; or

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(e) make the conclusion of contracts subject to acceptance by  
the other party of supplementary obligations which, by  
their nature, have no connection with the subject of such  
contracts;

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shall be unlawful and void.

(3) The provisions of *subsection (1)* may, however, be declared  
inapplicable in the case of any agreement, decision or concerted  
practice or category of agreements, decisions or concerted practices  
between individuals, trade associations or companies where the Direc-  
tor of Consumer Affairs and Fair Trade is satisfied that the agreement,

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decision or concerted practice or category of agreements, decisions or concerted practices (as the case may be) contribute to improving the production and distribution of goods or to promoting technical and economic progress and which do not—

- 5 (a) impose on the individuals, trade associations or companies concerned terms which are not indispensable to the attainment of those objectives; and
- (b) afford such individuals, trade associations or companies the possibility of eliminating competition in respect of a substantial part of the product in question.
- 10

2.—(1) Any abuse by one or more individuals, trade associations or companies of a dominant position within the State or a substantial part of the State shall be unlawful in so far as it may affect trade within the State.

Abuse of a dominant position.

15 (2) Without prejudice to the generality of the foregoing, such abuse may, in particular, consist of—

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- 20 (b) limiting production, markets or other technical developments to the prejudice of the consumer;
- (c) applying similar conditions to equivalent transactions or other trading parties, thereby placing them at a competitive disadvantage;
- 25 (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature according to commercial usage, have no substantial connection with the subject matter of such contracts.

3.—(1) The High Court shall have jurisdiction to award damages to any person, trade association or company aggrieved by a breach of either *section 1* or *section 2* of this Act.

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Jurisdiction to award damages and other relief.

(2) The High Court shall have jurisdiction in any case arising under this Act to grant an injunction or a declaration where it is just and convenient to do so.

35 (3) The damages awardable by the High Court under this section may include punitive damages.

4.—(1) Agreements, decisions and concerted practices of the kind described in *section 1 (1)* of this Act which come into existence after the entry into force of this Act and in respect of which the parties thereto seek the application of *section 1 (3)* must be notified to the Director of Consumer Affairs and Fair Trade. No decision in the application of *section 1 (3)* may be taken until such agreements, decisions or concerted practices (as the case may be) have been notified to the Director of Consumer Affairs and Fair Trade.

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Notification of new agreements, decisions and concerted practices to the Director of Consumer Affairs and Fair Trade.

45 (2) *Subsection (1)* shall not apply to agreements, decisions or concerted practices where—

- (a) not more than two parties (whether an individual, trade association or company) are parties thereto and the principal effect of the said agreement, decision or concerted practice is merely to—
    - (i) restrict the freedom of one party to the contract in determining the prices or conditions of business on which the goods which he has obtained from the other party to the contract may be resold, or 5
    - (ii) impose restrictions on the exercise of the assignee or user of any copyright, patent, trade mark or industrial design or of the person entitled under a contract to the assignment, or grant, of the right to use a method of manufacture or knowledge relating to the use and to the application of industrial processes; 10
- or 15

- (b) they have as their sole object—
  - (i) the development or uniform application of standards or types, or
  - (ii) joint research and development, or
  - (iii) specialisation in the manufacture of products, including agreements necessary for achieving this where the products which are the subject of specialisation do not represent more than 25 per cent. of the volume of business done in identical or similar products in the State or where the combined annual turnover of the parties to the agreement does not exceed £200,000, whichever is the greater. 20 25

Notification of existing agreements, decisions and practices.

5.—(1) Agreements, decisions and concerted practices of the kind described in *section 1 (1)* of this Act which are in existence at the date of entry into force of this Act and in respect of which the parties seek the application of *section 1 (3)* of this Act shall be notified to the Director of Consumer Affairs and Fair Trade before 31st December, 1991. 30

(2) *Subsection (1)* shall not apply to agreements, decisions or concerted practices falling within *section 4 (2)*. 35

Duration and revocation of decisions.

6.—(1) A decision of the Director of Consumer Affairs and Fair Trade in application of *section 1 (3)* shall be issued for a specified period and conditions and obligations may be attached thereto.

(2) The Director of Consumer Affairs and Fair Trade may, on application, renew his decision if the requirements of *section 1 (3)* continue to be satisfied. 40

(3) The Director of Consumer Affairs and Fair Trade may revoke or amend his decision or prohibit specific acts by the parties thereto where—

- (a) there has been a material change in any of the circumstances on which the decision was based, 45

(b) the parties commit a breach of any obligation attached to any decision,

(c) the decision is based on incorrect information or was induced by deceit; or

5 (d) the parties abuse the exemption from the provisions of *section 1 (1)* of this Act granted to them by the decision.

(4) The Director of Consumer Affairs and Fair Trade shall not exercise his powers of revocation or amendment under *subsection (3)* without notice to the parties concerned and without giving them an adequate opportunity of making submissions to the Director in the matter.

7.—(1) For the purpose of obtaining any information necessary for the exercise by the Director of Consumer Affairs and Fair Trade of any of his functions under the Act, an authorised officer may exercise any of the powers conferred on an authorised officer by section 15 of the Restrictive Practices Act, 1972 (as amended by section 18 of the Restrictive Practices (Amendment) Act, 1987).

Powers of the Director of Consumer Affairs and Fair Trade to authorise inspection of premises and records, etc.

(2) In this section, an “authorised officer” means a person authorised in writing by the Director of Consumer Affairs and Fair Trade for the purposes of this section.

8.—(1) Any person aggrieved by a decision of the Director of Consumer Affairs and Fair Trade pursuant to his powers under *sections 1, 4, 5, 6 and 7* of this Act may appeal on a point of law to the High Court within six months of the notification or publication of the said decision.

Appeal to the High Court on a point of law.

(2) The High Court shall have jurisdiction to extend the time specified in *subsection (1)* in any case where it shall seem just and convenient to do so.

9.—(1) Section 8 of the Restrictive Practices Act, 1972 (as amended by section 14 of the Restrictive Practices (Amendment) Act, 1987) is hereby repealed.

Repeal of section 8 of Restrictive Practices Act, 1972 and saver.

(2) Notwithstanding the provisions of *subsection (1)* or any other provision of this Act, every order under section 8 of the Act of 1972 or every order deemed to be an order under section 8 of the Act of 1972, shall continue to be in force.

10.—(1) This Act shall not apply to anything done in the exercise of a statutory duty.

Saver for exercise of statutory duty and application to State enterprises.

(2) Notwithstanding *subsection (1)*, this Act shall apply to any State enterprise which is for the time being a designated body for the purposes of the Worker Participation (State Enterprises) Act, 1977.

11.—In this Act—

Interpretation.

“the Act of 1972” means the Restrictive Practices Act, 1972;

“company” has the same meaning as the meaning assigned to it by section 2 (1) of the Companies Act, 1963;

“designated body” has the same meaning as the meaning assigned to it by section 1 of the Worker Participation (State Enterprises) Act, 1977;

“Director of Consumer Affairs and Fair Trade” means the holder of the office of the Director of Consumer Affairs and Fair Trade established by section 5 (2) of the Restrictive Practices (Amendment) Act, 1987; 5

“patent” includes a patent of addition granted in accordance with section 28 of the Patents Act, 1964.

Commencement. 12.—This Act shall come into force on such day, not later than 31st 10  
December, 1989, as the Minister for Industry and Commerce shall appoint.

Short title. 13.—This Act may be cited as the Enterprise (Competition and  
Consumer Protection) Act, 1989.

Consumer Affairs and Fair Trade means the

AN BILLE FIONTRAÍOCHTA (COSAINT  
IOMAÍOCHTA AGUS TOMHALTÓIRÍ),  
1989

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BILLE

*(mar a tionscnaíodh)  
dá ngairtear*

Acht do thoirmeasc cleachtas frithiomaíochta agus mí-úsáid stádais cheannasaigh; do leasú na nAchtanna um Chleachtas Srianata, 1972 agus 1987, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

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*An Teachta Máirtín Ó Cuilin a thólaic,  
2 Feabhra, 1989*

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BAILE ÁTHA CLIATH:  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais,  
Teach Sun Alliance, Sráid Theach Laighean, Baile Átha Cliath  
2, nó trí aon díoltóir leabhar.

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CONSUMER PROTECTION) BILL, 1989

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*(as initiated)  
entitled*

An Act to prohibit anti-competitive practices and abuses of a dominant position; to amend the Restrictive Practices Acts, 1972 and 1987, and to provide for related matters.

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*Presented by Deputy Martin Cullen,  
2nd February, 1989*

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